

HUMAN SERVICES BOARD

In re) Fair Hearing No. T-03/08-97
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Appeal of)

The petitioner appeals a decision by the Office of Vermont Health Access (OVHA) denying her request for an exception under M108 for coverage for dentures under the Medicaid program. The issue is whether the petitioner has shown that serious detrimental health consequences will occur if she does not receive dentures.

1. The petitioner is a woman in her early fifties with a history of agoraphobia, panic disorder, depression, and problems with digestion and choking. In January 2008 she requested Medicaid coverage for tooth extractions and dentures.

2. On January 3, 2008 one of the petitioner's primary care providers completed an OVHA "medical need form" in support of coverage for dentures for the petitioner. On the form the doctor noted that the petitioner is at risk of "aspiration pneumonia" due to choking on her food.

3. On January 8, 2008, the petitioner's psychiatrist submitted a note stating that the poor condition of the petitioner's teeth: "increases her anxiety about her appearance with accompanying loss of self-esteem, increase in depression, and increased reluctance to leave her house. A well-fitted set of dentures would help to alleviate many of these difficulties."

4. On January 10, 2008, the petitioner's dentist submitted a report stating that based on the opinions of the petitioner's doctors that he had read, he would recommend the "removal of (petitioner's) remaining teeth and the fabrication of a full upper denture".

5. On January 26, 2008, another of the petitioner's primary care providers also completed an OVHA "medical need form" in which he noted that improperly chewed food presented a risk of choking and that the petitioner has had "panic attacks related to choking".

6. On February 18, 2008, a gastroenterologist whom the petitioner had recently seen also submitted an OVHA M108 form. He described the petitioner's problems as follows:

Pt. is having difficulty swallowing with food sticking in esophagus due to GERD and a stricture with acid reflux. Food lodges and she needs to induce vomiting to clear it. She is at risk for aspiration pneumonia with esophagal (sic) food impactions.

He also noted that "ill-fitting dentures prevent her from being able to chew food properly and may contribute to this problem".

7. In a thorough and detailed decision dated March 5, 2008, OVHA denied the petitioner's request for M108 coverage for dentures, concluding that the above reports did not demonstrate either that her condition was unique, that serious detrimental health would occur if she did not have dentures, or that appropriate alternative forms of treatment, including better food selection and preparation, were not available or appropriate.

8. Following a hearing held on March 25, 2008, the petitioner was given an opportunity to submit additional medical evidence addressing the Department's rationale, above. In a phone call on June 6, the petitioner indicated that she had no further evidence to submit.

9. Regarding the petitioner's *physical* health, based on the above reports it cannot be concluded that the Department abused its discretion in determining that the petitioner would be unlikely to suffer any serious health consequences if she had to make modifications to her diet to allow for any continuing inability to properly chew food.

Indeed, none of the petitioner's providers have even addressed this aspect of the Department's decision.

10. Although the evidence regarding the petitioner's *mental* health is more problematic, it must similarly be concluded that the brief statement submitted by her psychiatrist does not establish that the petitioner's mental health is likely to deteriorate without dentures. It appears that the petitioner is presently receiving effective and appropriate mental health services. There is no indication that the petitioner is presently in crisis, or that the lack of dentures (as opposed to effective treatment of her gastric problems) makes it any more likely that her mental health will significantly deteriorate in the future.

ORDER

The Department's decision is affirmed.

REASONS

As a cost-saving measure, the state has eliminated coverage of dentures for all adult Medicaid beneficiaries. W.A.M. § M621.6. However, OVHA has a procedure for requesting exceptions to its non-coverage, which requires the recipient to provide information about her situation and supporting documentation. M108. OVHA must then review the

information in relation to a number of criteria as set forth below:

1. Are there extenuating circumstances that are unique to the beneficiary such that there would be serious detrimental health consequences if the service or item were not provided?
2. Does the service or item fit within a category or subcategory of services offered by the Vermont Medicaid program for adults?
3. Has the service or item been identified in rule as not covered, and has new evidence about efficacy been presented or discovered?
4. Is the service or item consistent with the objective of Title XIX?
5. Is there a rational basis for excluding coverage of the service or item? The purpose of this criterion is to ensure that the department does not arbitrarily deny coverage for a service or item. The department may not deny an individual coverage of a service or item solely based on its cost.
6. Is the service or item experimental or investigational?
7. Have the medical appropriateness and efficacy of the service or item been demonstrated in the literature or by experts in the field?
8. Are there less expensive, medically appropriate alternatives not covered or not generally available?
9. Is FDA approval required, and if so, has the service or item been approved?
10. Is the service or item primarily and customarily used to serve a medical purpose, and is it generally not useful to an individual in the absence of an illness, injury, or disability?

The Board has held that M108 decisions are within the discretion of the Department and will not be overturned unless OVHA has clearly abused its discretion by either failing to consider and address all of the pertinent medical evidence under each criterion set forth above or by reaching a result that cannot be reasonably supported by the evidence. See, e.g., Fair Hearing Nos. 20,275 and 17,547.

The Board has also recognized the importance in M108 cases of distinguishing between physical and mental health issues. In this regard the Board has specifically ruled that as a general matter neither an inability to chew food nor problems with self-esteem and the ability to interact socially are "unique" medical problems sufficient to establish "extenuating circumstances" for dentures within the meaning of the above provisions. See Fair Hearing Nos. 20,275, 19,989 and 19,425.

In Fair Hearing Nos. 20,275 and 19,989 the Board upheld the Department's denial of an M108 exception for dentures in cases where the individuals did not demonstrate that the lack of teeth would likely result in serious detrimental health consequences given the availability and appropriateness of alternative means of maintaining proper nutrition. In the

instant case, the evidence submitted by the petitioner's medical providers does not establish that dentures are required to maintain the petitioner's physical health.

As noted above, the petitioner's psychiatrist has stated that the petitioner's depression and self-esteem will be helped if her appearance is improved with dentures. However, one could reasonably expect this to be the case with any individual that elects virtually any cosmetic procedure. The Board has specifically held that the M108 criteria (*supra*) require a significantly more severe psychiatric prognosis. Fair Hearing No. 20,275.

Based on the evidence that was submitted on the petitioner's behalf, it cannot be concluded that OVHA has abused its discretion in its assessment that the petitioner has not demonstrated that either her physical or mental health is likely to worsen significantly if she is not provided with dentures.¹ In light of the above, the Board is bound to affirm the Department's decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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¹ The petitioner is free to reapply for an M108 exception for dentures if she can obtain such evidence. She is encouraged to show this decision to her medical providers so that they may better understand the legal

standard for coverage of dentures, and specifically address those standards if they feel the petitioner meets them.